

FILÉD  
2/14/2020 6:21 PM  
Mary Angie Garcia  
Bexar County District Clerk  
Accepted By: Brenda Carrillo

citcmi/sac1

**CAUSE NO. 2019-CI-11216**

**RAFAEL VARGAS** § **IN THE DISTRICT COURT**  
Plaintiff, §  
§  
§  
V. § **438<sup>th</sup> JUDICIAL DISTRICT**  
§  
§  
**HOME DEPOT** § **OF BEXAR COUNTY, TEXAS**  
Defendant.

**PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**NOW COMES** Rafael Vargas, hereinafter called Plaintiff, complaining of and about The Home Depot, hereinafter called Defendant, and for cause of action would show unto the Court the following:

**DISCOVERY CONTROL PLAN LEVEL**

1. Plaintiff intends that discovery be conducted under Discovery Level 2.

**PARTIES AND SERVICE**

2. Plaintiff, Rafael Vargas, is an Individual whose address is 307 Merrimac, San Antonio, Texas 78223.

3. Rafael Vargas has not been issued a driver's license. Rafael Vargas has not been issued a social security number.

4. Defendant,

The Home Depot, a Corporation based in Texas, is organized under the laws of the State of Texas, and service of process on the Defendant may be effected pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving the registered agent of the corporation, **Corporate Service Company dba CSC- Lawyers Incorporating Service Company 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Tx 78701-3218**, its registered office. Service of



said Defendant as described above can be effected by certified mail, return receipt requested.

#### **JURISDICTION AND VENUE**

5. The subject matter in controversy is within the jurisdictional limits of this court.
6. Plaintiff seeks:
  - a. monetary relief over \$200,000 but not more than \$1,000,000.
7. This court has jurisdiction over the parties because Defendant is a Texas resident.
8. Venue in Bexar County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

#### **FACTS**

9. At all times material hereto, Defendant the Home Depot was the possessor in control of the premises located at 527 Fair Ave., San Antonio, Texas 78223.

10. On or about November 17, 2017 Rafael Vargas was an invitee on property controlled by the Defendant, and was injured under the following circumstances: Plaintiff entered the premises and as he was waiting in the return line for his turn to talk to an employee of Defendant when large shower fell on his head and body causing injury to the Plaintiff

#### **LIABILITY OF DEFENDANT THE HOME DEPOT**

11. On or about November 17, 2017 and at all times mentioned herein, Defendant the Home Depot was the possessor of the property in question and either owned, occupied or maintained the premises located at 527 Fair Ave., San Antonio, Texas 78223 as a retail store.

12. At all times mentioned herein, Defendant the Home Depot had such control over the premises in question that Defendant the Home Depot owed certain duties to Plaintiff, the breach of which proximately caused the injuries set forth herein.

13. On or about November 17, 2017, Rafael Vargas was an invitee on the premises

owned by the Defendant when Rafael Vargas was injured as a result of the acts and omissions of the Defendant.

**LIABILITY OF DEFENDANT THE HOME DEPOT  
UNDER GENERAL NEGLIGENCE THEORY**

14. Defendant owed Rafael Vargas and others similarly situated the duty to keep the return area and entrance free from any dangerous conditions that may injure its customers.

15. Defendant breached said duty by directing the customer or allowing the customer who returned the item to locate/leave the item in an area that caused the injury to Plaintiff.

**PROXIMATE CAUSE**

16. Each and every, and all singular of the foregoing acts and omissions, on the part of Defendant, taken separately and/or collectively, constitute a direct and proximate cause of the injuries and damages set forth below.

**DAMAGES FOR PLAINTIFF, RAFAEL VARGAS**

17. As a direct and proximate result of the occurrence made the basis of this lawsuit, and Defendant's acts as described herein, Plaintiff, Rafael Vargas was caused to suffer injury to his head and back, and to endure anxiety, pain, and illness resulting in damages more fully set forth below.

18. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, Rafael Vargas has incurred the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff, Rafael Vargas for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services in Bexar County, Texas;
- B. Reasonable and necessary medical care and expenses which will, in all reasonable probability, be incurred in the future;
- C. Physical pain and suffering in the past;

- D. Mental anguish in the past;
- E. Physical pain and suffering in the future;
- F. Mental anguish in the future;
- G. Physical impairment in the past; and
- H. Physical impairment which, in all reasonable probability, will be suffered in the future.

25. By reason of the above, Plaintiff, Rafael Vargas has suffered losses and damages in a sum within the jurisdictional limits of the Court and for which this lawsuit is brought.

**REQUEST FOR DISCLOSURE T.R.C.P. 194**

Under the authority of TEXAS RULES OF CIVIL PROCEDURE 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, pursuant to Rule 194.3 (a) of the TEXAS RULES OF CIVIL PROCEDURE, the information or material described in Rule 194.2 (a) through (I).

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff, Rafael Vargas, respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

By: /S/ Richard H. Silvas  
Richard H. Silvas

Texas Bar No. 18351800  
Email: richard@rsilvas.com  
9901 West IH 10, Ste 775  
San Antonio, TX 78228-1319  
Tel. (210) 236-5165  
Fax. (210) 236-5420  
Attorney for Plaintiff  
Rafael Vargas

**PLAINTIFF HEREBY DEMANDS TRIAL BY JURY**

CERTIFIED MAIL #70181830000042660307



Case Number: 2019-CI-11216

2019CI11216 S00004

RAFAEL VARGAS

vs.

THE HOME DEPOT

(Note: Attached document may contain additional litigants).

IN THE DISTRICT COURT  
438th JUDICIAL DISTRICT  
BEXAR COUNTY, TEXAS

**CITATION**

**"THE STATE OF TEXAS"**

DIRECTED TO: THE HOME DEPOT

BY SERVING ITS REGISTERED AGENT, CORPORATE SERVICE COMPANY DBA CSC-LAWYERS INC  
211 EAST 7TH STREET 620  
AUSTIN TX 78701-3218

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this CITATION and THIRD AMENDED PETITION, a default judgment may be taken against you." Said CITATION with THIRD AMENDED PETITION was filed on the 14th day of February, 2020.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 19TH DAY OF February A.D., 2020.

RICHARD H SILVAS  
ATTORNEY FOR PLAINTIFF  
9901 WEST IH 10 775  
SAN ANTONIO, TX 78230-1316



**Mary Angie Garcia**  
Bexar County District Clerk  
101 W. Nueva, Suite 217  
San Antonio, Texas 78205

By: *Laura Castillo*, Deputy

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RAFAEL VARGAS  
vs  
THE HOME DEPOT

Officer's Return

Case Number: 2019-CI-11216  
Court: 438th Judicial District Court

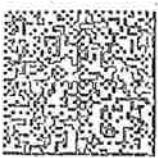
Came to hand on the 19th day of February 2020, A.D., at 2:10 o'clock P.M. and EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by delivering to: \_\_\_\_\_ at 211 EAST 7TH STREET 620 AUSTIN TX 78701-3218 a true copy of this Citation, upon which I endorsed that date of delivery, together with the accompanying copy of the CITATION with THIRD AMENDED PETITION

Cause of failure to execute this Citation is \_\_\_\_\_.

**Mary Angie Garcia**  
Clerk of the District Courts  
of Bexar County, TX

By: *Laura Castillo*, Deputy

U.S. POSTAGE PAID  
ZIP 78204 3 007.05<sup>0</sup>  
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00000350931 FEB 20 2020



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**Mary Angie Garcia**  
Bexar County District Clerk  
101 W. Nueva, Suite 217  
San Antonio, Texas 78205  
RETURN SERVICE REQUESTED



THE HOME DEPOT  
C/O CORPORATE SERVICE COMPANY DBA CSC-LAW  
211 EAST 7TH STREET 620  
AUSTIN, TX 78701-3218

2019C111216 2/19/2020 C1TCM LURA CSTL10